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SERVICE DATE - NOVEMBER 24, 1999

## SURFACE TRANSPORTATION BOARD

### DECISION

Ex Parte No. 282 (Sub-No. 19)  
Parts 1105 and 1180

## NEW PROCEDURES IN RAIL ACQUISITIONS, MERGERS AND CONSOLIDATIONS

AGENCY: Surface Transportation Board.

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation Board (Board) is withdrawing the proposed rule and discontinuing the Ex Parte No. 282 (Sub-No. 19) rulemaking proceeding relating to new procedures in rail acquisitions, mergers and consolidations.

DATES: The proposed rule is withdrawn and the rulemaking proceeding is discontinued on November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

### SUPPLEMENTARY INFORMATION:

In a notice of proposed rulemaking (NPR) that was served January 26, 1995 (an inadvertently omitted Appendix A was served January 27, 1995), and that was published in the Federal Register on January 31, 1995, at 60 FR 5890, the Interstate Commerce Commission (Commission) proposed to revise parts 1105 and 1180 of Title 49, Code of Federal Regulations, in order to establish procedures that might ensure a more expeditious handling of proceedings involving transactions subject to the jurisdiction of the Commission under former 49 U.S.C. 11343, 11344, and 11345. As respects “major” transactions (i.e., transactions involving the merger or control of two or more Class I railroads), the Commission proposed a 180-day procedural schedule (i.e., a procedural schedule under which the final decision would be issued 180 days after the date on which the primary application was filed). As respects “significant” transactions (i.e., transactions that are of regional or national transportation significance but that do not involve the merger or control of two or more Class I railroads) and “minor” transactions (i.e., transactions that are neither major nor significant), the Commission proposed conforming changes to 49 CFR 1180.4 (to ensure that the timetables applicable to significant transactions and minor transactions would be at least as expedited as the timetable applicable to major transactions). The Commission also proposed conforming changes to its 49 CFR part 1105 environmental regulations.

The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted with certain changes the relevant statutory provisions, and transferred to the Board responsibility for the performance of functions respecting those statutory provisions. See ICCTA § 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA § 201(a) (establishment of the Board); new 49 U.S.C. 11323, 11324, and 11325, as enacted by ICCTA § 102(a) (these are the post-1995 versions, as respects railroads, of what had been 49 U.S.C. 11343, 11344, and 11345, respectively); new 49 U.S.C. 702, as enacted by ICCTA § 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA § 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the Board). In accordance with the mandate of ICCTA § 204(b)(1), the Ex Parte No. 282 (Sub-No. 19) rulemaking proceeding, which had been instituted by the Commission in the 1995 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1995 NPR and to discontinue the Ex Parte No. 282 (Sub-No. 19) rulemaking proceeding. Our experience with the administration of major transaction cases handled under new 49 U.S.C. 11323-25 has led us to conclude that we should continue the case-by-case approach under which, as respects any particular major transaction, we can adopt a procedural schedule best suited to the full and fair development of the record for that transaction. See, e.g., CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidation Rail Corporation, STB Finance Docket No. 33388, Decision No. 6 (STB served May 30, 1997, and published that day in the Federal Register at 62 FR 29387) (adopting a 350-day procedural schedule to govern the major transaction at issue in the STB Finance Docket No. 33388 proceeding); Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, STB Finance Docket No. 33556, Decision No. 6 (STB served Aug. 14, 1998, and published that day in the Federal Register at 63 FR 43744) (adopting a 300-day procedural schedule to govern the major transaction at issue in the STB Finance Docket No. 33556 proceeding).

#### SMALL ENTITIES

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

Ex Parte No. 282 (Sub-No. 19)

#### ENVIRONMENTAL AND ENERGY CONSIDERATIONS

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### BOARD RELEASES AVAILABLE VIA THE INTERNET

Decisions and notices of the Board, including this notice, are available on the Board's website at "WWW.STB.DOT.GOV."

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary